

DATE: December 30, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-33265

DECISION OF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

Juan J. Rivera, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The security concerns raised by a 32-year-old Bangladesh-born naturalized U.S. citizen Applicant (also a citizen of France) with a French-born mother (a citizen and resident of France), a deceased Bangladesh-born father, a brother residing in South America (a dual citizen of France and the United Kingdom), and a sister-in-law serving in the foreign service of Finland (a citizen of Finland) residing in South America, with whom he retains close relationships, none of whom are agents of that foreign government (except the sister-in-law) or in a position to be exploited by the governments of France, United Kingdom, or Finland, have been mitigated by the evidence developed herein. Clearance is granted.

STATEMENT OF THE CASE

On March 25, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an Administrative Judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated April 18, 2003, Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was initially assigned to another Administrative Judge on July 23, 2003, but, due to caseload considerations, was reassigned to, and received by, this Administrative Judge on August 6, 2003. A notice of hearing was issued on August 7, 2003, and the hearing was held before me on August 18, 2003. During the course of the hearing, including an authorized period following the hearing, two Government exhibits, eight Applicant exhibits, and the testimony of one Applicant witness (the Applicant), were received. The transcript (Tr.) was received on August 29, 2003.

RULINGS ON PROCEDURE

During the early stages of the hearing, under Rule 201(b)(2), Federal Rules of Evidence, Department Counsel requested that Official Notice be taken of certain adjudicative facts as set forth in two documents furnished for consideration. It was the intent of Department Counsel to address national security concerns pertaining to The Peoples Republic of China (PRC) and the French Republic (France). There being no objection interposed by Applicant, Official Notice was taken of the National Counterintelligence Center, *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage (2000)*, consisting of 17 pages; and extracts of The Interagency OPSEC Support Staff, *Operations Security Intelligence Threat Handbook*, dated April 1996 (revised May 1996), consisting of 18 pages. At the conclusion of the hearing, Department Counsel conceded the significance of the two documents had become minimized since there was no longer any relationship between Applicant's family and PRC. I have concluded the documents offer rather limited material information.

FINDINGS OF FACT

Applicant has admitted one the factual allegations and portions of other factual allegations pertaining to foreign influence under Guidelines B (subparagraph 1.a., and portions of subparagraphs 1.b. through 1.d.). Those admissions are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 32-year-old employee of a defense contractor seeking to obtain a security clearance.

Applicant was born in 1970 in Bangladesh to a mother born in France and a father born in Bangladesh. His parents separated and he and his mother and brother relocated to France when Applicant was about 5-years old, and he received his early education in France. He first came to the United States as part of a student exchange program in January 1986 to attend high school. He returned to France in June 1986, but in January 1989, again returned to the United States on a student visa to attend college. He obtained his degree in December 1992 and commenced his engineering career in September 1993. In January 1996, Applicant enrolled in graduate school. He is currently a software engineer with a government contractor.

In 1993, Applicant married a native-born U.S. citizen, and they now have at least two children. Applicant's mother, a citizen of France, ⁽¹⁾ is a retired translator, who resides in France with a modest pension, and it is Applicant's intention to eventually have her join his family in the U.S. ⁽²⁾ Applicant's mother has visited him twice a year since 1993, is very fond of the United States, and would be happy to relocate to be near her son. ⁽³⁾ Applicant's father, now deceased, was a citizen of the United Kingdom. ⁽⁴⁾

Applicant's brother, a dual citizen of France and the United Kingdom, ⁽⁵⁾ is married to a citizen of Finland who serves in the foreign service of Finland. ⁽⁶⁾ Applicant and his brother maintain regular but infrequent contact with each other, ⁽⁷⁾ and Applicant has visited his brother at his wedding in Finland in 1990-91, following his nephew's birth in the United Kingdom in 1992, and again in the United Kingdom in 1996. His brother and family visited Applicant following his first daughter's birth in 2001. ⁽⁸⁾ They generally speak to each other by telephone about four or five times per year. ⁽⁹⁾

Applicant's grandfather had a brother whose wife had son, ⁽¹⁰⁾ a citizen of France, who is a retired dentist, residing in France. ⁽¹¹⁾ Applicant's mother looked after her "cousin" who was in poor health, and in exchange for her services, the cousin paid for most of Applicant's education costs. ⁽¹²⁾ Applicant and his mother were initially under the impression that the funding came from her cousin's son, but it eventually was discovered the money had actually come from her cousin. ⁽¹³⁾ Applicant does not owe any money to the son of his mother's cousin for his education. ⁽¹⁴⁾ He occasionally sends the son, who is not a blood relative, ⁽¹⁵⁾ holiday greeting cards, but has no other relationship with him. ⁽¹⁶⁾

Applicant's sister-in-law, a citizen of Finland who serves in the foreign service of Finland, was previously posted to a

diplomatic post with the Embassy of Finland in PRC but, in the Summer of 2003, relocated to another diplomatic post with the Embassy of Finland in a South American country. ⁽¹⁷⁾

Applicant was naturalized as a U.S. citizen in September 2001. ⁽¹⁸⁾ His "naturalization as a U.S. citizen and surrender of [Applicant's] birth citizenship were . . . deliberate choices." ⁽¹⁹⁾ Applicant repeated his allegiance to the United States over any other country on several occasions, and had previously attempted to renounce his French citizenship but was refused the opportunity to do so under French law. ⁽²⁰⁾ In an effort to impress the French Government with the seriousness of his intentions, in March 2003, he returned his expired (in 1996) passport to the Consulate-General of France and explained his intent to not renew it in the future. ⁽²¹⁾

Applicant has been employed by his employer, a government contractor, since August 2001. Classmates, coworkers, and project managers characterize his performance, character, and trustworthiness in highly favorable terms. He has been referred to as reasonable in judgment, fundamentally trustworthy, conscientious, diligent, and responsible.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

An Administrative Judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision set forth in Section E.2.2., Enclosure 2, of the Directive, are intended to assist the Administrative Judge in reaching fair and impartial common sense decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an Administrative Judge should consider are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to an evaluation of the facts of this case:

GUIDELINE B - FOREIGN INFLUENCE: A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns, are set forth and discussed in the Conclusions section below.

Since the protection of the national security is the paramount determinant, the final decision in each case must be arrived at by applying the standard that the issuance of the clearance is "clearly consistent with the interests of national security," ⁽²²⁾ or "clearly consistent with the national interest." For the purposes herein, despite the different language in each, I have concluded both standards are one and the same. In reaching this decision, I have drawn only those

conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences that are grounded on mere speculation or conjecture.

In the decision-making process, the burden of producing evidence initially falls on the government to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. If the government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the government's case, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

CONCLUSIONS

Upon consideration of all the facts in evidence, an assessment of the witness testimony, demeanor, and credibility, and after application of all appropriate legal precepts and factors, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

With respect to Guideline B, the Government has established its case. Applicant has been portrayed as a person who is a potential security risk because members of his immediate family or persons to whom he is bound by affection, influence, or obligation--in this instance, Applicant's mother, brother, sister-in-law, and a "cousin"--are not citizens of the U.S. or may be subject to duress. This situation raises the potential for vulnerability to coercion, exploitation, or pressure, and the exercise of foreign influence that could result in the compromise of classified information. In support of its contentions, the government has cited the fact Applicant's mother is a citizen and resident of France; his brother is a dual citizen of France and the United Kingdom, residing in PRC; his sister-in-law is a citizen of Finland, serving with the foreign service of Finland, residing in PRC; and a "cousin" is a resident of France.

Based on my review of the evidence, I conclude the security concerns manifested by the Government, in this instance, are largely unfounded. The citizenship and residency status of Applicant's family members, standing alone, is sufficient to raise security concerns over the possibility of Applicant's vulnerability to coercion, exploitation, or pressure. However, the mere possession of family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B: [\(23\)](#)

The language of [Guideline] B (Foreign Influence) in the Adjudicative Guidelines makes clear that the possession of such family ties *may* pose a security risk. Whether an applicant's family ties in a foreign country pose a security risk depends on a common sense evaluation of the overall facts and circumstances of those family ties. *See* ISCR Case No. 98-0419 (April 30, 1999) at p. 5.

As noted above, Applicant's mother is a retired translator who visits Applicant twice each year and would welcome the opportunity to relocate to the United States to be near Applicant and his family. His father is deceased. Applicant's brother and sister-in-law no longer reside in PRC as they did during the sister-in-law's foreign service posting there, but now reside in a South American country where the sister-in-law is serving in her new diplomatic post with the Embassy of Finland. And, the purported "cousin" from whom Applicant believed he had previously received college educational assistance, is not really a blood relative and had nothing to do with the educational assistance. Furthermore, Applicant has had little continuing relationship with the "cousin" and no longer can be considered to have close ties of affection or obligation to that person.

There is no evidence to indicate his mother is involved in any "intelligence work" for the French Government, or his

brother is similarly working on behalf of the French or British Governments. They apparently have no "official ties" to either government. The "cousin"--a person whom, under the circumstances herein I deem not to be "an immediate family member or a person to whom [Applicant] has close ties of affection or obligation"--is a retired dentist, and is not involved in any "intelligence work" for the French Government. These facts, when considered in light of the nature of the governments in the France and the United Kingdom--one a mostly friendly, but competitive, democracy which has not been hostile to the United States since the establishment of the U.S., and the other a friendly constitutional monarchy which is our closest enduring friend and ally, and which has not been hostile to the United States since the War of 1812, and whose heritage and interests are nearly identical, and not inimical to the United States--facilitates an analysis involving the adjudicative guidelines and the various applicable conditions set forth therein.

I do not consider the previous diplomatic posting of Applicant's sister-in-law or the temporary residence of his brother and sister-in-law in the PRC to have any lasting significance to Applicant's present security worthiness. Likewise, their present temporary residence in a South American country where the sister-in-law is currently posted--a friendly country with a popularly-elected democratic government which took over the reins of government from the military over a decade ago, whose interests are not inimical to the United States--again presents little if any significance to Applicant's present security worthiness.

Finland is a friendly parliamentary republic which is not hostile to the United States, and its interests are not inimical to the U.S. There is, however, some concern because Applicant's sister-in-law is a member of the foreign service of Finland. It remains unclear if the focus of the SOR is on her status with the diplomatic corps of Finland or on the location where she was previously posted. Nothing in the evidence or the materials submitted for Official Notice makes any particular mention of Finland as a source of concern as a country which practices industrial espionage and is an "active collector" of foreign economic information. (24) That concern is diminished, in this instance, because the government has offered no evidence to indicate a heightened level of collection activities in Applicant's area of expertise. These facts, when considered in light of the nature of the government in Finland, facilitate an analysis involving the adjudicative guidelines and the various applicable conditions set forth therein.

On the other hand, France has been identified as a source of concern as a country which practices industrial espionage and is an "active collector" of foreign economic information. However, in this instance, Applicant's relationship with France, solely through the citizenship and residence of his mother, the dual, but rejected, citizenship of Applicant, and his brother's citizenship, greatly minimize the potential negative impact on his present security worthiness.

The residence and/or citizenship of Applicant's family members are clearly of security concern under foreign influence disqualifying condition (DC) E2.A2.1.2.1. (*an immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country*). Likewise, his sister-in-law's position with the foreign service of Finland raises DC E2.A2.1.2.3. (*relatives, cohabitants, or associates who are connected with any foreign government*). However, also applicable, in this instance, is Foreign Influence Mitigating Condition (MC) E2.A2.1.3.1. (*a determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States*).

Considering all of the above, nothing constitutes an unacceptable security risk. Thus, I conclude Applicant has, through evidence of extenuation and explanation, successfully mitigated and overcome the Government's case with respect to Guideline B. Accordingly, allegations 1.a. through 1.d. of the SOR are concluded in favor of Applicant.

For the reasons stated, I conclude Applicant is suitable for access to classified information.

FORMAL FINDINGS

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline B: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Robert Robinson Gales

Chief Administrative Judge

1. Government Exhibit 1 (Security Clearance Application, dated December 20, 2001), at 5.
2. Applicant's Response to SOR, dated April 18, 2003, at 1.
3. Applicant Exhibit F (Letter from Applicant's mother, dated August 14, 2003).
4. Government Exhibit 1, *supra* note 1, at 5.
5. *Id.*, at 6; Tr., at 55.
6. Government Exhibit 2 (Statement, dated September 4, 2002), at 2.
7. Applicant Exhibit A (Statement, dated August 18, 2003), at 1.
8. Applicant's Response to SOR, *supra* note 2, at 1.
9. *Id.*
10. Tr., at 40.
11. Applicant's Response to SOR, *supra* note 2, at 2.
12. Applicant Exhibit F, *supra* note 3.
13. *Id.*
14. *Id.*
15. Tr., at 40.
16. Tr., at 45.
17. Applicant's Response to SOR, *supra* note 2, at 2; Tr., at 58.
18. Government Exhibit 1, *supra* note 1, at 1.
19. Applicant Exhibit A, *supra* note 7, at 1.

20. Applicant Exhibit B (Applicant's letter to the Consulate-General of France, dated March 15, 2003).

21. *Id.*; Tr., at 52-53.

22. See Exec. Or. 12968, "*Access to Classified Information*;" as implemented by Department of Defense Regulation 5200.2-R, "*Personnel Security Program*," dated January 1987, as amended by Change 3, dated November 8, 1995. However, the Directive uses both "clearly consistent with the national interest" (see Sec. B.3; Sec. C.2.; and Sec. D.2.; Enclosure 3, Sec. 1.; and Sec. 25), and "clearly consistent with the interests of national security" (see Enclosure 2 (Change 3), Adjudicative Guidelines, at 2-2).

23. See ISCR Case No. 98-0507 (Appeal Board Decision and Reversal Order, May 17, 1999), at 10.

24. See Annual Report to Congress on Foreign Economic Collection and Industrial Espionage--2000, prepared by the National Counterintelligence Center, found at <http://www.nacic.gov/reports/fy00.htm>, at 15.